SELECTIONS FROM THE RECORDS

OF THE OFFICE OF THE

FINANCIAL COMMISSIONER, PANJAB.

PUBLISHED BY AUTHORITY.

No. 16.

PRINTED BY W. E. BALL, SUCCESSOR TO THE PANJAB PRINTING COMPANY.

MDCCCLXXIV.

H10(4)

XLIV.—RIGHT OF TENANTS TO SINK WELLS.

From J. A. E. Miller Esquire, Secretary to Financial Commissioner, Panjab, to all Commissioners and Deputy Commissioners, Panjab, Circular No. 68—4755, dated 23rd September 1868.

The accompanying correspondence is circulated with a view to ascertaining the custom in the Panjab with regard to kacha wells sunk by tenants. The subject has attracted attention in the Legislative Council, and the reports of Local Governments have been called for as to whether any measures ought to be taken for altering the law, as interpreted by a recent decision of the High Court at Agra.

Kacha Wells.

2. The Officiating Financial Commissioner observes that, in the Panjab the localities where kacha wells can be made are very limited. Along the lower *Bêt* of the Sutlej, it is believed, they are common, and any cultivator may there dig such a well without special permission, but acquires no rights thereby.

3. In the Bar of the Rechna Doab, and South-East of Firozpur, kacha wells are made by graziers which last for some years, and are used for watering cattle only. There are moreover certain rivers, like the Deg, in the Rechna Doab, on which *Jhullars* are constructed, some temporary, and some permanent.

4. Enquiry should be made as to whether there are any restrictions imposed on tenants in all such cases. The village custom should be ascertained, and the provisions of the administration papers should be verified, and compared with the actual customs found to exist.

5. Reports of district officers should be submitted through Commissioners, with their opinion.

From E. C. Bayley, Esquire, Secretary to Government of India, to the Secretary to the Government, Panjab, No. 295 dated 11th August 1868.

I am directed to forward for the information of the Lieutenant Governor, a copy of a letter that has been addressed to the Government of the North Western Provinces, in regard to the liability of tenants to be ejected from their holdings, if they make certain improvements without the previous consent of their land-lords.

2. I am to request that the Governor General in Council may be favored with information in regard to the law or custom with prevails in the Panjab upon this subject, and that His Honor the Lieutenant Governor will be good enough to say, whether he is of opinion that any measures ought to be taken for placing the law on a different footing.

Copy of a letter No. 293, dated 11th August 1868, from E. C. Bayley, Esqr., Secretary to the Government of India, to the Secretary to the Government of the North Western Provinces.

I am desired to request that the attention of the Lieutenant Governor may be drawn to the debate of the 22nd ultimo,* in the Legislative Council on the Bill which has now become law, as Act XIX of 1868. (The Oudh Rent Act).

* Published in the Supplement to the *Gazette of India* of the 1st August 1868.

2. It will be observed that, in speaking of that portion of the Act (Sections 22 to 26), which provides for the payment, under certain circumstances, of compensation to tenants for unexhausted improvements, Mr. Strachey referred to a lately published decision† of the High Court at Agra, by which it has been declared to be the general law of the North-Western Provinces that a tenant, even though he possess a right of occupancy, is liable to ejectment from his holding, if he should dig a kacha well without the previous consent of his landlord. It was admitted by the High Court that "there may be local usages forming exceptions to the general law," but considering as Mr. Strachey said, and as the Board of Revenue observed in their circular of the 3rd June 1868‡ that in a great part of Northern India, the digging of kacha wells is as essential to the production of a crop as the ploughing of the land itself, the Governor General in Council cannot view without anxiety the results to which this decision may possibly lead.

† *Vide Government Gazette, N. W. Provinces,* 3rd June 1868.

‡ Published *in Government Gazette North Western Provinces, 3rd June* 1868.

3. His Excellency in Council does not doubt that this subject has already attracted the Lieutenant Governor's attention; but he has thought it desirable to notice the fact, that the subject has been referred to in the debates of the Legislature, and to ask whether, in the opinion of His Honor, any further measures ought to be taken by the Government for the alteration of the law which has been laid down by the High Court of the North-Western Provinces.

From Secretary Sadr Board of Revenue North-Western Provinces, to all Revenue Officers in the North Western Provinces, Circular No. 8 dated 3rd June 1868.

I am desired by the Board of Revenue to call your attention to a recently published decision of the High Court, No. 158 of 1866 :—

Koonj Beharee Patuck (*Defendant*), *Petitioner,* *VERSUS* Shiva Baluck Sing (*Plaintiff*), *Opposite party.*	Heading VII. Landlord and Tenant. *Revenue Department.* *Present.* C. B. Thornhill, Esq., C. S. I. and J. F. D. Inglis, Esqr.

By this decision the general rule is laid down, that a ryot may be evicted for digging a kacha well without the consent of his landlord, but at the same time it is admitted that, "there may be local usages forming exceptions to the general law."

2. The Board are apprehensive that, unless due consideration is given to this important exception, the indiscriminate application of the "general law" may in many districts, place the cultivator at the mercy of the zemindar, as, in some parts of these Provinces, the annual sinking of a kacha well is believed to be as essential to the production of a crop as the cultivation of the ground by the plough.

3. In all cases, therefore, in which the zemindar sues for the ejectment of a cultivator for breach of a condition of contract by sinking a kacha well, the Revenue Officers must be most careful to investigate the question of local custom, and record evidence and a finding on this important point.

ABSTRACT.

BOARD call attention to a recently published decision of the High Court, ruling that a ryot may be evicted for digging a kacha well without the consent of his landlord, and communicate instructions.

The 20th July 1867.

PRESENT.

The Hon'ble Sir W. Morgan, Knight, *Chief Justice.*

"	"	W. Roberts,	*Justices.*
"	"	F. B. Pearson,	
"	"	C. A. Turner,	
"	"	R. Spankie,	

Case No. 158 of 1866.

Review of judgment of the decision of the late Sadr Court in special appeal, dated 9th June 1866, reversing the decision of H. B. Henderson, Esquire, Judge of Benares, dated the 21st November 1865.

Koonj Beharee Patuck *(Defendant) Petitioner.*

VERSUS

Shiva Baluck Singh, *(Plaintiff) Opposite party.*

Pleaders for Petitioners.—Lalla Man Rai, Munshi Hanoomán Pershad : Babú Piari Mohun Banúrji, and Lalla Lalita Pershad.

Pleaders for opposite party.—Moulvie Haider Hossien, Moulvie Mehndee Hassun, Moulvie Furid-ud-din Ahmed, Mir Ali Ahmed, and Shah Assud Ali.

Ryot :—Ejectment of—Breach of contract, Condition (express or otherwise), Sections 6 and 23, Clause 5 Act X of 1859.

The act of digging a well or planting trees may not necessarily imply or assert a proprietary right in the land in which the well is dug or the trees are planted, yet by the general law of these provinces, a ryot even having a right of occupancy being prohibited from doing certain acts, such as planting of trees or digging a well, without his landlord's consent, makes himself liable to ejectment, unless protected by local usage, from his holding; if he were to dig a well or plant trees without the landlord's consent, Section 6, Act X of 1859, which provides that a ryot who has held or cultivated the land for more than twelve years, acquires a right of occupancy in it so long as he pays rent for the same, must be read consistently with Clause 5, Section 23, of that enactment, which provides that a ryot is liable to ejectment from his holding for breach of contract, and not as importing that a ryot having right of occupancy, so long as he pays the rent claimable from him, is at liberty to use and deal with the land as he pleases.

The useful or beneficial nature of an act is not a justification of it, if it be a breach of contract.

A condition not expressly made between the parties to a contract, may nevertheless be attached to such contract by custom.

The general rule, that a ryot is liable to ejectment, if he digs a well without the consent of the zemindar, may be varied by particular local usage or express contract.

This case was referred to a full Bench by F. B. Pearson and R. Spankie, Judges, who admitted the review with the following order :—

Referring order.—The plantiff's suit was brought under clause 5, Section 23, Act X of 1859, for the ejectment of the defendant from a holding of three bigahs and six biswahs of land, for breach of condition of contract, by digging a kacha well in the holding aforesaid. The case was disposed of by all the Courts, together with another and similar case instituted by the Rajah of Benares against Mussumat Munia, and the grounds of the decision in the two cases are the same. The claim was decreed by the Court of first instance, whose decision was upheld by us in special appeal, in opposition to that of the Lower Appellate Court.

We have acceded to an application for a review of our judgment in the case, with a view to the reconsideration of the question, whether the alleged breach of contract is one which renders a tenant liable to ejectment under the terms of Clause 5, Section 23, Act X of 1859; but not because we think the precedent referred to by the applicant of the 16th July last, which follows an earlier decision of the 16th March last, and refers to mortgages by tenants of their rights in their holdings to be strictly applicable to the present case. It is true that such mortgages resemble the act of digging a well, in not being allowable according to custom without the permission of the landlord; but the transfer of a non-proprietary right is not an assertion or exercise of proprietary right exactly in the same sense in which the construction of a well may be regarded as such. On the other hand, the latter act may be viewed (while the former could not be) as calculated to increase the productive powers of the land, and therefore subservient to the ends contemplated by the lease of land for cultivation. Nevertheless, the construction of a well withdraws a portion of land from cultivation, and the digging of kacha wells may, in some respects or under some circumstances, be attended with injury to the adjoining land. It might be supposed that the increase of the productive power of the land in consequence of irrigation from wells, would ultimately confer an advantage upon the landlord in the shape of an enhanced rent, and the terms of the second Clause of Section 17 of the Act, do not appear to be necessarily inconsistent with that supposition; but it is urged more plausibly that such an advantage would not accrue in cases governed by Sections 3 and 4 of the Act; and it is strenuously contended that if tenants may dig wells with impunity without the landlord's consent, the distinction between landlord and tenant is in danger of being obliterated.

Section 128 of the "Directions for Settlement Officers" declared cultivators incompetent to perform any act, which is considered to indicate proprietary right, such as digging a well, planting a garden, or locating a labourer. But the Circular order dated 26th September 1856, of the Sadr Board of Revenue, North-Western Provinces, recognized the expediency of permitting cultivators to sink wells, on the understanding that the tenure of the well shall be in every respect the same as the tenure of the holding in which it is constructed.

The late Sadr Court have we believe, held repeatedly that the plantation of trees in land leased for the purposes of cultivation is an act so manifestly at variance with the object and purpose of the lease as to constitute a breach of contract within the terms of Clause 5, Section 23. But the digging of a well, as we have already remarked, inasmuch as it conduces to the efficient cultivation of the land, differs from the act of planting trees.

The question whether tenants are competent to dig wells without their landlord's consent, is distinct from the question whether by so doing they are liable to ejectment under Clause 5, Section 23. The latter question would not arise in cases in which the lease contained an express condition, attaching the penalty of ejectment to such an act. It arises in cases in which there is no lease, or at least no written lease, or no such stipulation in the lease; and when there is no other contract between the parties than what is implied by their relative positions.

We refer the subject, as being one of nicety and importance, for the consideration of the next Full Bench, and direct the papers to be circulated in the meanwhile among the Judges. The case is re-admitted on the file.

OPINION OF THE FULL BENCH.

This is a case in which the ejectment of a tenant from a holding of three bigahs and six biswahs of land, for breach of condition of contract by digging a kacha well therein was decreed by a Divisional Bench of the late Sadr Court, in special appeal on 9th June, 1866, in opposition to the decision of the Lower Appellate Court, and in concurrence with that of first instance; and in which an application for a review of judgment by the defendant (respondent), was granted on the 3rd September last, in order that it might be determined by a Full Bench of the High Court whether, having regard to the circumstances that the act of digging a well for the purpose of irrigation, as tending to increase the productive powers of the land, is subservient to the end contemplated by the lease of the land for cultivation, such act can justly be viewed as a breach of the contract between landlord and tenant, and renders the latter liable to ejectment from the holding, in cases in which no such condition has been expressly made between the parties. It is to be observed, first, that the useful or beneficial nature of an act is not a justification of it if it be a breach of contract; and secondly, that a condition not expressly made between the parties to a contract may nevertheless be attached to such contract by custom.

Section 6, Act X of 1859, which declares that any ryot who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him so long as he pays the rent payable on account of the same, must be read consistently with Clause 5, Section 23 of the same enactment, which provides for the cognizance of suits to eject a ryot on account of a breach of the condition of any contract by which a ryot may be liable to ejectment, and not as importing that a ryot having a right of occupancy, so long as he pays the rent claimable from him, is at liberty to use and deal with the land as he pleases. Ordinarily the lease of land by a landlord does not involve a surrender on his part of all rights in the land, except the right to rent, and we are satisfied that in these provinces the power of a ryot even having a right of occupancy in his holding, is limited by other conditions than the single condition of paying the proper rent, and that there are certain acts, such as the construction of a well, and the planting of trees, which he is not competent to perform without his landlord's consent. There may, of course, be local usages forming exceptions to the general law; but we see no reason to doubt that the law is such as it is represented to us to be by the pleaders who appear for the plaintiff in this case. The law may or may not be opposed to good policy. The act of a digging a well or planting a tree does not necessarily imply or assert a proprietary right in the land in which the well is dug or the tree planted. Whether it be most expedient that the tenant should be encouraged to improve his holding by all means, or that the benefits resulting from certain modes of improvement should be secured to the landlord, or left to his option, may be a question; but it is one which we are not called upon to consider. The Court must recognize the law as it is found to exist, so long as it shall not be superseded by positive law, and must apply it in all cases not governed by local usages or special contract.

So also in respect of the penalty incurred by a tenant who is guilty of a breach of contract of the kind which this case brings to our notice; the unwritten law of the country must be our guide. Were we free to legislate upon the subject, it might seem to us equitable and expedient to look to the amount of injury actually caused to the landlord by the act complained of, and to grant him relief and com-

pensation, whenever possible, otherwise than by ejectment of the tenant. But it is not contended or proved that any other penalty than forfeiture of his holding for such a breach of contract is sanctioned by the law of these provinces.

The decision of the 9th June, 1866, in this case now under review, as far as it proceeds on the principles above stated, is not at variance with any former decisions passed by the late Sudder Court; and it is also, we believe, in accord with the views which have been usually held and enunciated by other authorities. The decision is accordingly affirmed by us, with costs.

From J. A. E. Miller, Esquire, Secretary to Financial Commissioner, Panjáb, to T. H. Thornton, Esquire, Secretary to Government Panjáb, No. 297, dated 13th April 1869.

With reference to your No. 630, dated 17th August 1868, regarding kacha wells, I am directed to state that the reports of officers were called for in Circular No. 68, dated 23rd September 1868, of which copy is enclosed, and the result is shown in the enclosed abstracts of replies.

The Officiating Financial Commissioner's views are as follows :

2. Practically the question applies only to tenants with a right of occupancy. Tenants-at-will can be readily ejected, and therefore it is not to be expected that they would attempt to sink kachá wells in opposition to their landlords.

3. The Officiating Financial Commissioner believes that in no part of the Panjáb is the sinking of a kacha well a necessary step towards the raising of a crop as is said to be the case in some parts of the North-Western Provinces.

4. With the exception of the Hissár and Jhelam districts, and the Parganah of Bálabgarh (Dehli) and one village in Sirsa, the village administration papers are silent on the point under discussion.

5. The enquiry lately made shows that the custom of the Panjáb is, that tenants with a right of occupancy may sink kacha wells without the leave of the proprietors, except in parganah Bálabgarh and the districts of Ráwalpindi, Jhelam, Sháhpúr, Derah Ismail Khán and Derah Ghází Khán; in the districts of Rohtak, Simla and Kángra, where kacha wells are not known, and in Muzaffargarh, where the question is doubtful. It is also stated that in the Chúnián and Kasúr parganahs of the Lahore district a tenant cannot sink a kacha well without the permission of the landlord. No replies have been received from the Pesháwar Division.

6. But this customary law is of no force except in those districts where it is incorporated in the village administration papers, for Section 19 of the Panjáb Tenancy Act provides that "no tenant having a right of occupancy in any land shall be ejected therefrom otherwise than in execution of a decree," which decree shall not be made unless there is an unsatisfied decree against the tenant for arrears of rent, or unless the landlord buys him out; and the latter provision does not extend to the superior classes of tenants mentioned in Section 5 of the Act.

It would therefore seem to follow that under the existing law in the Panjáb, *i. e.*, the Panjáb Tenancy Act, a tenant may sink kacha wells, plant jhallars, and the like, in those districts where there is no provision in the settlement record to the contrary, in defiance of the proprietor, and in all cases where there is no agreement binding the tenants not to sink such wells.

7. It so happens, however, that where the customary law does not admit of the sinking of kacha wells by tenants the operation of the Tenancy Act will not be

hurtful to any appreciable degree in this particular. For, in the districts of Ráwal pindi and Sháhpúr kacha wells for irrigation are not known, though certainly in Sháhpúr they are used in watering cattle, and some slight trouble might arise about them; in Rohtak, Simla and Kángra they are unknown, and are likely to remain so; in Derah Ismail Khán, Derah Ghází Khán, Muzaffargarh and in the districts of Pesháwar Division, the settlement has yet to be made, and provision can be recorded in the administration papers of these districts in conformity with the custom of the people; and as regards the Chúnián and Kasúr parganahs of the Lahore district, the probability is, that the alleged custom is not well defined, and it is not believed that any evil would result from adopting in them the same principles as may be applied to the remaining portion of that district.

8. It therefore appears to Mr. Melvill, that no legislation is required regarding the right of tenants to sink kacha wells for irrigation in the Panjáb.

Kacha Wells.

The Government of India, (No. 295, dated 11th August 1868), request information as to the custom in the Panjáb in regard to kacha wells made by tenants, with reference to a ruling of the High Court of Agra, that tenants are liable to ejectment for so doing.

The custom is briefly noted.

Dehli and Larsauli Parganahs.—Tenants may sink wells without landlord's permission, but acquire no rights.

Balabgarh.—They are not allowed to do so.

Karnál.—Tenants are allowed, without interference from landlords.

Gurgáon.—No restriction. Seldom sunk as they are useless.

Hissár District and Sirsa Tahsil.—Sanction of landlord is necessary. Not liable to ejectment for digging without sanction. *Fazilká*—hereditary cultivators may dig wells but acquire no rights thereby.

Rohtak.—The practice is almost unknown.

Ambálah.—Tenants are not restricted in digging kacha wells; but must not make pacca wells—2,088 kacha wells in the district.

Ludiánah.—Tenants do dig kacha wells but acquire no rights.

Simla.—Kacha wells not sunk in the district.

Jálandhar.—The practice is for tenants to dig kacha wells. Landlord is consulted in most cases.

Hoshiárpúr.—No restriction against kacha wells.

Kángra.—Lands not irrigated from wells.

Amritsar.—Commissioner says sinking of kacha wells is no infraction of proprietary rights. Deputy Commissioner: Such wells are sunk, but cultivators acquire no rights.

Siálkot.—There are no restrictions, but cultivators acquire no rights by forming kacha wells.

Gurdáspúr.—Kacha wells are sunk and landlords make no objection.

Multán.—Commissioner says as a rule there is no restriction, and tenants are not liable to ejectment. Deputy Commissioner: Where they are sunk in his district by the tenants the landlords pay the cost. Jhullars are generally put up by landlords. For these in some parts of the district, the tenant excavates the cut, and the landlord supplies the woodwork. In tahsil *Shújabád* tenants form Jhullars.

Muzaffargarh.—Tenants would not be ejected for making a kacha well without permission, but sanction of the landlord is usually obtained.

Montgomery.—There is no restriction; tenants acquire no rights by sinking kacha wells.

Lahore.—In parganahs Lahore and Sharakpúr hereditary cultivators can sink wells without permission of landlord. In Chúniân such permission is necessary. In Kasúr permission to sink a new kacha well is necessary. Non-hereditary cultivators cannot sink kacha wells without permission. No rights are acquired by forming such wells.

Firozpúr.—There are no restrictions.

Gujránwála.—Landlords do not object but encourage the sinking of kacha wells, no rights are acquired.

Ráwalpindi.—Commissioner remarks that kacha wells do not exist; they are of stone laid in mortar; no tenant can sink such a well without landlord's permission.

Jhelam.—Tenants cannot sink kacha wells without landlord's permission.

Sháhpúr.—Kacha wells are used for watering cattle, and cannot be dug without landlord's permission. Commissioner remarks that tenants would be liable to ejectment for sinking kacha wells without leave.

Derah Ismail Khán.—There is no fixed rule; but permission is necessary.

Derah Ghází Khán.—Tenants ask permission, which is never refused.

Bannú.—There are no kacha wells.

From J. A. E. Miller, Esquire, Secretary to Financial Commissioner Panjáb, to T. H. Thornton, Esquire, Secretary to Government Panjáb, No. 1163, dated 3rd November 1873.

In the year 1868, an enquiry was instituted in accordance with the orders of Government of India, received with your No. 630, dated 17th August, regarding the right of tenants to sink kacha wells, and the views of the Officiating Financial Commissioner, Mr. Melvill, were communicated in this office No. 297, dated 13th April 1869, to the effect that there was nothing to prevent tenants sinking wells of this description, planting jhalars, and the like, in those districts where there is no provision in the settlement records to the contrary, and in all cases where there is no agreement binding tenants not to sink wells, &c. The Officiating Financial Commissioner at the same time expressed his opinion that even in respect of districts where the customary law of the Panjáb did not admit of this concession to tenants, no legislative action was necessary, as kacha wells were unknown in some of them, and in the remainder a settlement had yet to be made and provision could be recorded in the administration papers of those districts.

2. The above mentioned reference originated in consequence of a decision of the High Court of Agra, No. 158 of 1866, by which it was declared to be the general law of the North-Western Provinces that a tenant even though he possess a right of occupancy, is liable to ejectment from his holding, if he should dig a kacha well without the previous consent of his landlord.

3. The view affirmed by the judges of the Agra High Court in the above decision was however modified in a subsequent decision (special appeals Nos. 1225 and 1235, of 1870) of which a copy, attached to the Board's Circular No. 7 of 1872, was forwarded by the Board to the Financial Commissioner. This Circular, together with the correspondence marginally noted, is herewith forwarded for the orders of Government with the following remarks by the Financial Commissioner.

Officiating Secretary to Board of Revenue North-Western Provinces, to Officiating Secretary to Financial Commissioner, No. 1259, dated 17th October 1872, with enclosures.

Commissioner Dehli, No. 126, dated 5th May 1873.

Secretary to Financial Commissioner, No. 3406, dated 13th May 1873.

Commissioner Dehli, No. 370, dated 19th September 1873, all with enclosures.

4. Mention having been made in the Agra High Court's revised order of certain correspondence with the Commissioner of the Dehli Division, in which that officer reported that the proprietors in the Dehli Division objected to the right of cultivators to construct wells, the Financial Commissioner applied to the Board for a copy of the correspondence. The Board thereupon forwarded copy of their Circular No. 00 dated 26th September 1856, annexed to which is a letter No. 1189, dated 29th August 1856, wherein the principle now adopted in the revised order of the Agra High Court was enjoined for observance by all Commissioners in the North-Western Provinces, of which the Dehli Division then formed a part. As a means for promulgating this principle it was directed that in all cases of new settlement or re-settlement a stipulation should be entered in the administration paper that the cultivators shall have the liberty of sinking wells, but that the tenure of the well shall be in every respect the same as the tenure of the holding in which it is constructed.

5. Copy of this correspondence was forwarded to the Commissioner of the Dehli Division for information. The correspondence which ensued with the Commissioner of the Dehli Division shows that the objection of the proprietors to the construction of wells by tenants is almost universal. At the same time the Settlement Officer is of opinion that the introduction of a clause in the administration papers of the re-settlement, to the effect that the building a well shall give the tenant no proprietary claim, though superfluous as a mere statement of the law, would be most advantageous, as it would give the owners confidence and lead very largely to the extension of well irrigation.

6. The Financial Commissioner observes that the question is whether a proprietor has any right to oust a cultivator who builds a masonry well. This question cannot be decided by the settlement on theoretical grounds. The existing custom, if there is one, must be recorded; or if the parties agree, the agreement may be recorded. Mr. Egerton is averse to the insertion of any condition in the settlement records which will bind tenants with right of occupancy not to build masonry wells on the land they occupy unless it is clearly shown that such a condition in regard to the present cultivators or their predecessors in interest existed in the record of the first settlement. The records of the Dehli Division were almost universally destroyed during the mutiny: there is therefore some difficulty in ascertaining what the former settlement record contained. But it may be possible to ascertain what entries were made in the former papers by examining private copies which have been preserved or by taking the evidence of Kanungos or other officials who know what was entered.

7. The orders of His Honor the Lieutenant Governor are solicited regarding the extent to which the orders contained in the Circular of the Sadr Board of Revenue No. 00 dated 26th September 1856 are to be observed.

From T. H. Thornton, Esquire, Secretary to Government Panjab, to J. A. E. Miller, Esquire, Secretary to Financial Commissioner Panjab, No. 1705 dated 20th November 1873.

I am directed to acknowledge receipt of your letter No. 1163 dated 3rd November, with enclosures, regarding the right of tenants to sink wells in the Dehli Division.

2 In reply, I am desired to state that His Honor the Lieutenant Governor concurs in the Financial Commissioner's opinion expressed in para 6 of your letter, that it is undesirable to enter in the settlement records any provision which is not either a well ascertained custom, or a matter of special agreement between parties interested.

3 In the case of the present reference if, as is probable, it is an established custom that the sinking of a masonry well by a tenant does not change the status of the cultivator, the fact can be recorded ; if it is agreed that tenants shall be permitted to sink masonry wells on the understanding that their status is not altered, the agreement can be embodied in the settlement record ; but no authoritative declaration of the nature of that contained in the North Western Provinces Board of Revenue Circular 0 0 dated 26th September 1856, should, in His Honor's opinion, be entered except under the circumstances above described.